

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DONALD I. SHIPLEY,

Plaintiff,

vs.

Civil Action 2:08-CV-240
Judge Frost
Magistrate Judge King

KELLY J. COTTRILL, et al.,

Defendants.

OPINION AND ORDER

Plaintiff filed an application for leave to proceed *in forma pauperis*, Doc. No. 1, expressly stating, under penalty of perjury, that he is "not a prisoner." *Id.* On March 13, 2008, the Magistrate Judge noted that plaintiff's application for leave to proceed *in forma pauperis* did not provide the information required of prisoners by 28 U.S.C. §1915(b) and ordered plaintiff to provide the required information to the Office of the Clerk within thirty (30) days. *Order*, Doc. No. 2. Plaintiff was specifically advised that his failure to do so would result in the denial of his motion for leave to proceed *in forma pauperis*. *Id.* This matter is now before the Court on plaintiff's motion for relief from the Magistrate Judge's order of March 13, 2008. Doc. No. 3.

The Prison Litigation Reform Act ["the PLRA"] requires, *inter alia*, that prisoners seeking to file an action in federal court without prepayment of fees or costs provide certain financial information to the Court in connection with that request. 28 U.S.C. §1915(b). Moreover, filing and service fees are not waived in the case of a prisoner, but must be withheld from the prisoner's prison account. 28 U.S.C. §1915(b)(2). Plaintiff argues that he is not a prisoner required to provide the information by 28 U.S.C. §1915(b) because "he has never been accused, convicted and sentenced for a violation of the criminal laws of

the State of Ohio." Doc. No. 3, at 1 (emphasis in original). To provide the information required by the Magistrate Judge's order, plaintiff contends, would "subject plaintiff to be lawfully charged with perjury. ..." *Id.*

This Court agrees that plaintiff is a prisoner within the meaning of the PLRA. Section 1915(h) expressly provides: "As used in this section, the term 'prisoner' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release or divisionary program." The statute is phrased in the disjunctive, rather than the conjunctive; accordingly, any person who is accused of, convicted of, sentenced for or adjudicated" satisfies the definition of "prisoner" and must provide the information required by §1915(b). The *Complaint*, attached to Doc. No. 1, alleges that plaintiff was indicted by the Muskingum County Grand Jury on five felony counts and that the defendants (apparently assistant prosecuting attorneys for Muskingum County, plaintiff's trial judge and plaintiff's defense counsel) induced plaintiff to plead guilty even though the charges against him were not initiated by complaint. He was thereafter sentenced to a term of imprisonment and is currently incarcerated in the Chillicothe Correctional Institution. *Complaint*. Because plaintiff has been accused of, convicted of or sentenced for a crime, he must provide the required information.

Accordingly, the Court concludes that the Order of the Magistrate Judge dated March 13, 2008, is neither clearly erroneous nor contrary to law. See 28 U.S.C. §636(b).

Accordingly, plaintiff's motion for relief from that order,

Doc. No. 3, is **DENIED**. Plaintiff must provide the required information within fourteen (14) days of the date of this order. His failure to do so will result in the denial of his application for leave to proceed *in forma pauperis* and the immediate assessment of the full filing fee.

/s/ Gregory L. Frost
Gregory L. Frost
United States District Judge